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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-199780

DATE: February 17, 1981

MATTER OF: William L. Brown and William A. Schmidt, Jr. -  
[Excess Weight Charges in Transportation of household goods] - Excess weight

- DIGEST:
- (1) Employees of Department of Energy are liable for excess costs incurred in transportation of household goods under actual expense method where total weight exceeded statutory maximum limit of 11,000 pounds. Federal Travel Regulations prescribe procedure for determining the charges payable by the employees for excess weight when actual expense method of shipment is used. These regulations have the force and effect of law and may not be waived or modified by the employing agency or the General Accounting Office regardless of the existence of any extenuating circumstances. Computation of employees' liability should be based on total transportation charges.
  - (2) Employees whose household effects were shipped under "actual expense" method, seek monetary credit for value of packing services they provided. Under "actual expense" method contract for shipment is between Government and carrier. There is no regulation under the "actual expense" method which authorizes an allowance for services voluntarily provided by an employee. Employee may not be credited for value of packing services regardless of reliance on erroneous advice of agency official.
  - (3) In accordance with applicable provisions of the Federal Travel Regulations and absent contrary agency regulations,

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employee's shipment of professional books can be treated as an administrative expense of the agency provided that an appropriate agency official certifies that shipment was necessary and that similar materials would have had to be obtained at Government expense.

- (4) Question whether and to what extent authorized weights have been exceeded in shipment of household effects is question of fact primarily for administrative determination and ordinarily will not be questioned in absence of evidence showing it to be clearly in error. Absent other sufficient evidence that agency's reliance on valid weight certificate in determining excess weight was clearly in error, fact that scales used were found to be inaccurate 15 months after employee's shipment is of insufficient probative value to relieve employee of liability for excess weight charges.

B. B. Hensley, an authorized certifying officer with Oak Ridge Operations, Department of Energy, has submitted two claims involving household goods shipments under the actual expense method (Government Bill of Lading) where the shipments exceeded the maximum permissible weight allowance.

Case A: William L. Brown

Mr. Brown, an employee in the Office of the Chief Counsel, shipped 11,660 pounds of household goods in September 1979 on Government Bill of Lading No. K-1107286 from Potomac, Maryland, to Oak Ridge, Tennessee, at a total cost to the Government of \$3,009.14. The agency subsequently notified Mr. Brown that he owed the Government \$210.03 for excess weight charges based upon the difference between the figure of 12,000 pounds at which rate the shipment was billed, and the 11,000 pound maximum weight authorized. The agency offered the following analysis:

"The pro-rata share of 11/12 of transportation charges, the origin charges, the Line Haul fuel charge and shipment charges were all based on charges for 12,000 pounds (shipment charge would be the same for shipment from 8,000 to 11,999 pounds). The pro-rata share of the storage in transit and the accessorial services (which included carrying a spinet piano) were based on the 11,660 actual pounds of household goods shipped."

Mr. Brown takes exception to this computation stating in part that he was informed by the Chief of the agency's Transportation Branch that if he did some of his own packing, particularly such items as books, he could ultimately save on a possible overcharge since that part of the packing would be deleted from the total packing charge. Although he followed this advice and did some of his own packing, Mr. Brown points out that "no credit was given for this packing in spite of the fact that the movers were informed of the fact and, of course, were aware of the fact that they had not packed the subject cartons." In addition Mr. Brown contends that in any event "if everything else was assumed to have been equal in regard to packing and fixed charges... the correct figure would have been \$171.51" for the excess weight charges.

Section 5724(a) of title 5, United States Code, grants to the President discretionary authority to prescribe regulations for the payment of travel and transportation expenses of employees transferred in the interest of the Government from one official station or agency to another. The expenses of transporting, packing, crating, temporarily storing, draying and unpacking household goods and personal effects is limited by 5 U.S.C. 5724(a)(2) to not in excess of 11,000 pounds net weight.

Implementing regulations for the transportation and temporary storage of household goods are found in the Federal Travel Regulations (FTR), Chapter 2, Part 8 (FPMR 101-7). In paragraph 2-8.2a of those regulations a maximum weight allowance of 11,000 pounds has been established for employees

with immediate families. In paragraph 2-8.3b(5) a procedure is prescribed for determining the charges payable by the employee for excess weight when the actual expense method of shipment is used. That paragraph reads as follows:

"(5) Excess weight procedures. When the weight of an employee's household goods exceeds the maximum weight limitation, the total quantity may be shipped on a Government bill of lading, but the employee shall reimburse the Government for the cost of transportation and other charges applicable to the excess weight, computed from the total charges according to the ratio of excess weight to the total weight of the shipment."

Applying this formula to the facts of Mr. Brown's claim--using 11,660 pounds as the total weight, 660 pounds as the excess weight and \$3,009.14 as the total charges--results in an excess weight charge of \$170.33, computed as follows:

$$\frac{\text{total weight}}{\text{excess weight}} = \text{ratio} - \text{ratio} \times \text{total charges} = \text{employee's share}$$

$$\frac{11,660}{660} = .0566037 \text{ ratio}$$

$$\$3,009.14 \times .0566037 = \$170.33$$

This conclusion emphasizes that the excess weight charge computation provided in paragraph 2-8.3b(5) of the FTR is predicated on the actual net excess weight as a percentage of the total charges of the shipment. The Federal Travel Regulations have the force and effect of law and may not be waived or modified by the employing agency or the General Accounting Office regardless of the existence of any extenuating circumstances. Ronald E. Adams, B-199545, August 22, 1980. We are unaware of any additional authority which would permit the agency to prorate transportation charges, origin charges, or other shipment charges.

In regard to Mr. Brown's claim that he packed some of his household goods, we have noted that his household goods were shipped on a Government Bill of Lading by the "actual expense" method of shipment. Under this method the contract for shipment is between the Government and a designated carrier and the Government makes payment directly to the carrier. See paragraph 2-8.3b of the FTR. There is no regulation under the "actual expense" method, which authorizes an allowance for services voluntarily provided by an employee, even though the expense of such services would be reimbursable if provided by an authorized carrier. See Joseph B. Marcotte, Jr., B-196774, August 19, 1980, citing Alex Kale, 55 Comp. Gen. 779 (1976). Accordingly, there is no basis upon which Mr. Brown may be reimbursed for packing his household goods shipped under the actual expense method.

It is unfortunate that Mr. Brown was led to understand that he would receive a credit for the value of the packing services he provided. However, it is well established that the Government cannot be bound by the unauthorized or incorrect statements of its agents or employees. See Marcotte, cited above, and references contained therein. We point out, however, that by packing some of his own household goods, Mr. Brown did in fact reduce his liability for the cost of the excess weight shipped by virtue of the fact that costs of packing such excess weight were not incurred.

In accordance with the above, Mr. Brown is not entitled to receive a credit for the value of the services he rendered and he remains liable for the \$170.33 cost of shipping the excess weight of household goods.

Case B: William A. Schmidt, Jr.

Mr. Schmidt, who is also employed in the office of the Chief Counsel, shipped 14,800 pounds of household goods in July 1978 on Government Bill of Lading No. K-1106932 from Gaithersburg, Maryland, to Concord, Tennessee, at a total cost to the Government of \$2,461.30. The agency notified Mr. Schmidt that he owed \$631.96 for the 3,800 pounds of excess weight. With reference to our analysis of the method of computing excess weight

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charges under paragraph 2-8.3b(5) of the Federal Travel Regulations in connection with Mr. Brown's claim, we note that the \$631.96 figure for excess weight charges in Mr. Schmidt's case appears correct.

Mr. Schmidt is not satisfied with this result and has stated his contentions as follows:

"I cannot agree with the computation in view of the fact that it fails to subtract those expenses which would have been incurred by the Government irrespective of the actual weight of the shipment and the costs associated with the shipment of professional law books. In addition, it does not recognize the fact that we packed a considerable amount of the goods ourselves. The costs incurred bearing no relationship to the weight of the shipment include a 'per-shipment' of \$39.00; a piano handling charge of \$15.00; and a washer charge of \$10.00.

\* \* \* \* \*

Considering the three factors above, (1) the charges bearing no relationship to weight, (2) the inclusion of professional law books in the overall weight of the shipment, and (3) the fact that the packing charges are well within the maximum allowable for an authorized 11,000 lb. shipment, the amount requested by your office should be appropriately reduced to \$339.00 as computed in the attachment hereto."

Here again we must stress that the method of computing excess weight charges prescribed by paragraph 2-8.3b(5) of the Federal Travel Regulations is not subject to adoption by the agency or approval by its employees. Rather, as we have indicated, the Federal Travel Regulations have the force and effect of law and may not be waived or modified by the employing agency or the General Accounting Office regardless of the existence of any extenuating circumstances. See the Adams decision cited earlier. Therefore, Mr. Schmidt is required to pay the Government the charges incurred incident to the shipment of the

excess weight as computed in accordance with paragraph 2-8.3b(5) of the FTR. See also Jack McGee, B-199303, August 22, 1980.

As we pointed out in our analysis of Mr. Brown's claim, there is no basis upon which an employee may be reimbursed by the Government for packing his household goods shipped under the actual expense method on a Government Bill of Lading. That analysis has equally controlling application to Mr. Schmidt's contention regarding the costs of packing and the fact that he packed a considerable amount of his household goods himself.

Next we turn to Mr. Schmidt's contention that approximately 520 pounds of law books, included in the total net weight of the household goods shipment, should have been excluded. Where the weight of professional books, papers, and equipment would cause the employee's household goods shipment to exceed the maximum weight allowance, they may be transported to the new duty station as an administrative expense of the agency in accordance with paragraph 2-8.2a-1 of the FTR (FPMR Temp. Reg. A-11, Supp. 4, April 29, 1977). When shipped in the same lot with the employee's household goods and other personal effects under the actual expense method, the professional books, papers, and equipment shall be packed and weighed separately; the weight thereof and the administrative appropriation chargeable shall be stated as separate items on the Government bill of lading. In unusual instances in which it is impractical or impossible to obtain separate weights, a constructive weight of 7 pounds per cubic foot may be used. See paragraph 2-8.2a-1(3)(c) of the FTR (FPMR Temp. Reg. A-11, Supp. 4, April 29, 1977). However, paragraphs 2-8.2a-1(3)(a) and (b) of this authority require the employee to furnish an itemized inventory of the professional books, papers, and equipment for review by an appropriate authorizing official at the new permanent duty station. This official must also certify that the shipment was necessary in the proper performance of the employee's duties at the new duty station, and that similar materials would have had to be obtained at Government expense if they

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had not been transported to the employee's new duty station. As a result, if the required documentation and certification is obtained, and absent a Department of Energy regulation to the contrary, we would not object if Mr. Schmidt's shipment of professional books was treated as an administrative expense.

Finally, in a separate submission Mr. Schmidt now contends that he does not owe the Government for any excess weight charges. Mr. Schmidt's reasoning follows:

"By letter to me dated April 19, 1979 (copy attached) Atlas Van Lines, the carrier of my household goods, furnished me various documentation including the weight tickets for my particular shipment. These weight tickets reflect the fact that my goods were weighed on July 31, 1978, and August 2, 1978, on scales of the 'Fuel Coal Company' of Clinton, Tennessee. They also reflect a gross weight of 44,050 lbs. It is my understanding that these particular scales were checked for accuracy during October 1979, by the State of Tennessee, Bureau of Weights and Measures, and rejected in that the equipment failed to meet specifications and tolerances. Moreover, it is my understanding that these scales had not been checked by the State since February 26, 1975. And finally, these scales have a rated capacity of 30,000 lbs. whereas my shipment was supposedly weighed at 44,050 lbs. In view of this documentation, it appears that the Government does not have substantiation or evidence to support its contention that my household goods exceeded the authorized 11,000 lbs."

This Office has consistently held that the question of whether and to what extent authorized shipping weights have been exceeded in the shipment of household effects and the excess costs involved are considered to be matters primarily for determination by the administrative agency and ordinarily will not be questioned in the absence of evidence showing such determination to be clearly in error. Fredric Newman, B-195256, November 15,

1979. In the Newman case we stated that, in the absence of fraud or clear error, where the transportation voucher prepared by the carrier in support of its freight charges is supported by a valid weight certificate which is proper on its face and executed by a certified weighmaster, the Government must rely on the scale certification of record in computing the excess costs.

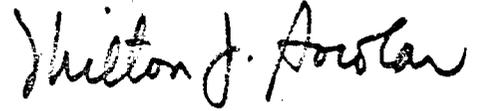
In the present case Mr. Schmidt would urge that, because the scales used for determining the weight of his household goods shipment were themselves inspected in October 1979 and failed to meet specifications and tolerances, the determination of the weight of his shipment in July of 1978 was clearly in error.

We do not agree. By his own account Mr. Schmidt's contention turns on a scale discrepancy that was detected 15 months after the shipment of his household goods. We do not believe that such evidence is dispositive of whether the scales were defective at the time of his shipment. Moreover, the administrative record shows that in response to Mr. Schmidt's allegation the carrier prepared a computation of the constructive weight of Mr. Schmidt's shipment by listing the items from the packing inventory on a cube sheet and multiplying the cubic feet by 7 pounds. See paragraph 2-8.2b(4) of the FTR. The resulting cubed weight was 15,169 pounds as compared to the weight charged of 14,800 pounds. This computation is also not dispositive of Mr. Schmidt's allegation; but, it does reflect a form of consistency that appears to indicate that the weight established by the scales at the time of Mr. Schmidt's shipment in July 1978 was not grossly inflated upward.

As stated in section 31.7 of title 4 of the Code of Federal Regulations, claim settlements are based on the facts as established by the Government agency concerned and by evidence submitted by the claimant, and the burden is on the claimant to establish the liability of the United States for payment. We find the factual premise on which Mr. Schmidt's contention is based does not support the conclusion that the agency's determination of his excess weight was "clearly in error" within the meaning of the Newman case cited above. As a result, Mr. Schmidt's contention is of insufficient probative value to relieve him of his liability for the excess weight charges--which,

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in accordance with our decision, must be recovered by the Government.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States